

REMARKS

The Office Action dated March 13, 2007 has been reviewed and the Examiner's comments carefully considered. Claims 12-29 were pending in this application. Claims 12-13 and claims 30-32 have been added via the present Amendment. Support for the claim amendments can be found at paragraph [0029] at pages 5-6 of the specification as filed. As such, no new matter has been added. Accordingly, claims 12-32 are pending in this application and claims 1, 2 and 30 are in independent form. Further, the specification of the present application is also amended herewith.

Objections to the Specification

The specification is objected to because the "Brief Description of the Drawing" heading is not present, the pages are allegedly not numbered consecutively, and the various trademarks recited in the specification are not marked with the registered trademark symbol. The specification is amended herewith to include the "Brief Description of the Drawing" heading, to properly denote the trademarks contained within, and to fix any minor typographical errors. However, the objection to the page numbering is incorrect because the present case is a United States national phase application of its corresponding PCT application. As such, the submission of the published PCT application in its entirety as the form of filing of the present application is indeed proper. Additionally, the previously filed abstract and claim amendments were submitted appropriately via a Preliminary Amendment, dated September 12, 2006. In light of the foregoing, reconsideration and removal of the objections to the specification are respectfully requested.

35 U.S.C. §102(b) Rejection

Claim 12 stands rejected under 35 U.S.C. §102(b) for asserted anticipation by U.S. Patent No. 5,605,893 to Kaufman (hereinafter, "the '893 patent"). Essentially, the Examiner asserts that the '893 patent reads on the composition of claim 12 because it teaches that a composition, when expanded to a 50g snack bar, contains 7.4% of amylopectin with a molecular weight equal to 107-109 and a food protein content of 10%-40%. The Examiner relies on an excerpt from Walter, "Polysaccharide Association Structures in Food", 1998, page 63, to support her assertion. The Applicants respectfully disagree and request reconsideration of this rejection by the Examiner.

Claim 12, as amended, is directed to a liquid food composition having 1-10 wt.% of a branched α -glucan having an average molar weight of at least 10^5 Da, and at least 1

wt.% of a food protein. In contrast, the '893 patent is not directed to a liquid product, but is directed to a solid food product. Further, amylopectin does not have a reduced digestibility over native starch. In fact, it actually is the more digestible component of starch, more digestible than amylase. As such, and in light of the amendment to claim 12, reconsideration and removal of this rejection as to claim 12 is respectfully requested.

35 U.S.C. §103(a) Rejections

Claims 13-23 stand rejected for asserted obviousness over the '893 patent in view of Okuno et al., "Relationship Between Hypoglycemic Symptoms and Blood Glucose Levels Due To Self-Monitoring In Summer Camp For Diabetic Children In Japan", *Diabetes Research and Clinical Practice*, 1985, hereinafter "Okuno", and further in view of U.S. Patent Application Publication No. 2002/0035089 (hereinafter, "the '089 publication"). The Applicants respectfully disagree and request reconsideration of this rejection by the Examiner.

The Examiner states that eating a food bar, as taught by the '893 patent, would induce satiety. Further, it is stated that Okuno discloses the fact that hunger is a symptom of hypoglycemia. Additionally, the Examiner relies on the '089 publication for the proposition that a composition containing starch could be used to treat obesity. However, none of these references, either alone or in combination, teaches or suggests the presently claimed invention.

Amended claim 13 recites the use of a poorly digestible branched α -glucan. This type of glucan is not considered "food" in the caloric sense of the word because it does not induce satiety by producing a feeling of being fed. Further, the fact that the '893 patent and Okuno are concerned with hypoglycemic symptoms has no bearing on the patentability of the claimed invention, regardless of the fact that the method of the present invention is suitable for diabetic subjects. Additionally, the '089 publication only teaches the use of starch to treat obesity, but the starch of the '089 publication does not meet criterion of poor digestibility as claimed in amended claim 13. As such, one of ordinary skill in the art would not look to the cited references and be motivated, or even find it obvious to try to combine the teachings of the references in order to arrive at the method of the present invention. As such, reconsideration and removal of the obviousness rejection as to claim 13 are respectfully requested. Claims 14-23 depend directly or indirectly from claim 13 and add further limitations thereto. For example, claims 14-15 limit the method to the use of a highly branched α -glucan and claim 19 limits the production of the α -glucan from sucrose.

Therefore, reconsideration and removal of the rejections to dependent claims 14-23 are also respectfully requested.

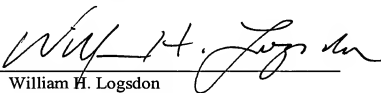
Further, claims 24-29 stand rejected for asserted obviousness over the '893 patent in view of Heber et al., "Clinical Evaluation of a Minimal Intervention Meal Replacement Regimen for Weight Reduction", Journal of the American College of Nutrition, 1994, (hereinafter "Heber"). However, as discussed above, the '893 patent does not teach the administration of a poorly digestible glucan to a subject. Heber, although disclosing the use of a liquid drink, does not clearly state what type of food is actually administered to a subject. As such, the teachings of these references, either alone or in combination, in no way teach, disclose or suggest the liquid food composition having a poorly digestible branched α -glucan of the present invention. As such, reconsideration and withdrawal of these claim rejections are respectfully requested.

Summary

For all of the reasons presented herein, Applicants believe that claims 12-31 are patentable over the cited prior art and are in condition for allowance. Reconsideration of the rejections and allowance of pending claims 12-31 are respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By 

William H. Logsdon
Registration No. 22,132
Attorney for Applicants
700 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
Telephone: 412-471-8815
Facsimile: 412-471-4094
E-mail: webblaw@webblaw.com